

Summary

An Austrian Critique of the Traditional Chicago Approach to Law and Economics

Although the economic analysis of law has been recently on the rise, many authors seem to question the possibility of its application in the field of judicial decision-making or legislative lawmaking. The main goal of this thesis is therefore, besides the descriptive part, to present a coherent critique of the theoretical foundations of the traditional economic approach to law, represented by the Chicago school of economics, from the perspective of the Austrian school of economics. Given the complexity of the topic, the analysis is focused only on the basic concepts of the economic analysis of law.

Chapter one deals with the Austrian school and its economic method. The development and basic characteristic of this school of thought are presented in this chapter as well. The key part consists in the introduction of the basic principles of Austrian economics, which are further used in analysing significant assumptions and concepts of the economic analysis of law.

Chapter two is focused on law and economics as such. Basic concepts are introduced as well as confronted with the teachings of the Austrian School. Also, some of the implications which the economic analysis has for law are presented in this chapter, namely implications for the concepts of pre-contractual liability and asymmetric information, the notion of efficient breach of contract, and, eventually, the amount of damages.

The key part of the thesis is chapter three which deals with the issue of economic efficiency. First, this concept is analysed from the general point of view, then the basic criteria according to which it is determined whether a situation is efficient or not are presented. These are particularly the criteria of Pareto efficiency and Kaldor-Hicks efficiency, which further encompasses the well-known concept of wealth maximization. Also discussed are ethical aspects of economic efficiency. Lastly, I present the Austrian view of the concept of economic efficiency.

Chapter four is concerned with the much discussed Coase theorem, which is employed in analysing externalities. Apart from the critique of this theorem from the perspective of the Austrian school, the very Coasian approach to the problem of externalities is analysed. An Austrian approach to this problem is presented as well.

In the final chapter I discuss the Austrian school approach to law and economics. First, the concept of ownership, which is a key to the understanding of the Austrian theory, is analysed. This analysis is followed by an introduction of the specific method used by Austrian scholars in investigating wider economic and social consequences of legal regulation. Finally, I discuss the Austrian theory of (legal) institutions.